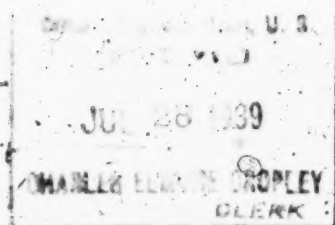


FILE COPY



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1939**

---

**No. 239**

---

**ABE FISCHER,**

*vs.*

*Appellant,*

**PAULINE OIL & GAS COMPANY.**

---

**APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.**

---

**STATEMENT AS TO JURISDICTION.**

---

**CLAUDE H. ROSENSTEIN,**

**HORACE BALLAINE,**

*Counsel for Appellant.*

**HUNT & EAGLETON,**

*Of Counsel.*

# INDEX

## SUBJECT INDEX.

	Page
Statement as to jurisdiction	1
Statutory provisions believed to sustain the jurisdiction	1
Federal statute involved	2
Date of the opinion	3
Date of application for appeal to the Supreme Court of the United States	3
Nature of case, including a statement of the grounds upon which it is contended that the questions involved are substantial	4
The Federal questions are substantial	7
How Federal questions were raised in the first instance in the appellate court and the way in which they were passed upon by the same court	8
Exhibit "A"—Mandate and opinion of the Supreme Court of the State of Oklahoma	11

## TABLE OF CASES CITED.

<i>Casady &amp; Co. v. Hartzell</i> , Iowa, 151 N. W. 97	8
<i>Coker v. Utter</i> , Ga., 108 S. E. 538	8
<i>Connell v. Walker</i> , 291 U. S. 1, 78 L. Ed. 613	8
<i>Dickens v. Breedlove</i> , Ga., 129 S. E. 886	8
<i>Equitable Credit Company v. Miller</i> , Ga., 137 S. E. 771	8
<i>Frazee v. Nelson</i> , Mass, 61 N. E. 40	8
<i>Hutchins v. Cantu</i> , Texas Civil Appeals, 66 S. W. 138, 8 C. J. S. 904, 6 Am. Jr. 698	8
<i>Kobrin v. Drazin</i> , N. J., 128 Atl. 796	8
<i>McCarty v. Light</i> , 139 N. Y. S. 853	8
<i>McKenney v. Cheney</i> , Ga., 45 S. E. 433	8
<i>Martin v. Greenlake State Bank</i> , Minn., 208 N. W. 21	8
<i>Miller v. Equitable Credit Co.</i> , Ga., 138 S. E. 282	8

<i>Neugent Garment Co. v. U. S. F. &amp; G.</i> , Wisc., 231 N. W. 600	8
<i>Pigg &amp; Sons v. U. S.</i> , 81 F. (2d) 334	8
<i>Taubel-Scott-Kitzmiller Co. v. Fox</i> , 264 U. S. 426, 68 L. Ed. 770	8
<i>Walker v. Connell</i> , N. Dak., 249 N. W. 726, 291 U. S. 1	8

## STATUTES CITED.

Bankruptcy Act, Section 67f (Chapter 541, Sec. 67, 30 Stat. 564; as amended Chapter 487, Sec. 16, 32 Stat. 800; Chapter 412, Sec. 12, 36 Stat. 842, Chapter 424, Sec. 5, 48 Stat. 924) (U. S. C. A., Title 11, Sec. 107, as amended)	1, 2
Judicial Code, Section 237 b and c, as amended by Chapter 14, 45 Stat. 54, 45 Stat. 466 (U. S. C. A., Remington on Bankruptcy, Sec. 1876, page 703 Title 28, Sec. 344, as amended)	2 8

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1939**

**No. 239**

**ABE FISCHER,**

*Appellant,*

*vs.*

**PAULINE OIL & GAS COMPANY,  
A CORPORATION.**

**JURISDICTIONAL STATEMENT.**

**I.**

**Statutory Provisions Believed to Sustain the Jurisdiction.**

In this suit there is drawn in question the interpretation of Sec. 67f of the Bankruptcy Act (Chapter 541, Sec. 67, 30 Stat. 564; as amended Chapter 487, Sec. 16, 32 Stat. 800; Chapter 412, Sec. 12, 36 Stat. 842; Chapter 424, Sec. 5, 48 Stat. 924) (U. S. C. A. Title 11, Sec. 107 as amended) by the Supreme Court of the State of Oklahoma.

The appellant contends that the Supreme Court of Oklahoma misinterpreted this said statute and by this misinterpretation of the Federal statute which was in effect prior to January 31, 1938, the appellant was deprived of his title to

a certain oil and gas lease. The statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States are subdivisions b and c of Sec. 237 of the Judicial Code and chapter 14, 45 Stat. 54, 45 Stat. 466 (U. S. C. A. Title 28, Sec. 344 as amended), the pertinent provisions of which are:

"It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by appeal, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had . . . where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States . . . If a writ of appeal be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the appeal was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the appeal was allowed."

## II.

### **Federal Statute Involved.**

The basic Federal statute involved is Sec. 671 of the Bankruptcy Act (Chapter 541, Sec. 67, 30 Stat. 564, as amended; Chapter 487, Sec. 16, 32 Stat. 800; Chapter 412, Sec. 12, 36 Stat. 842; Chapter 424, Sec. 5, 48 Stat. 924) (U. S. C. A. Title 11, Sec. 107 as amended) and reads as follows:

"All levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, and



any bond which may be given to dissolve any such lien so created, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien, and any non-exempt property of his which he shall have deposited or pledged as security for such bond or to indemnify any surety thereon, shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry."

### III.

#### **The Date of the Opinion.**

The date of the opinion of the Supreme Court of Oklahoma which is the highest court to which the case could have been carried was January 10, 1939. Petition for Rehearing was timely filed and denied on April 4, 1939. Application for Permission to File Second Petition for Rehearing was filed and denied on May 16, 1939.

### IV.

#### **Date of Application for Appeal to the Supreme Court of the United States.**

The Petition for Appeal to the Supreme Court of the United States was presented to and allowed by the Chief

Justice of the Supreme Court of Oklahoma on the 30th day of June, 1939.

V

**Nature of Case, Including a Statement of the Grounds Upon Which it is Contended that the Questions Involved are Substantial.**

This is an appeal from the final judgment of the Supreme Court of Oklahoma in cause No. 27,931, Pauline Oil & Gas Company, plaintiff, in error, vs. Abe Fischer, defendant in error, which was an appeal from the judgment entered in favor of Fischer for possession, quieting title to a certain oil and gas lease, and damages, tried in the District Court of Pawnee County, Oklahoma. The facts are undisputed and may briefly be stated as follows:

In August, 1934, Sam Rainbolt obtained an award for compensation from the Geraldine Oil Company before the Industrial Commission of the State of Oklahoma. In October, 1934, the Geraldine Oil Company purported to make an assignment of all of its assets, including the lease in question, for benefit of creditors. In January, 1935, sale was made by the aforesaid assignee for benefit of creditors to the Pauline Oil & Gas Company for the sum of \$2500.00. In September, 1935, Sam Rainbolt, contending that the alleged assignment for benefit of creditors and the proceedings thereunder were fraudulent and void, issued an execution against the assets and property of the Geraldine Oil Company, and the Sheriff of Pawnee County on September 17, 1935, levied upon the lease in question and advertised the same for sale for November 12, 1935. On November 12, 1935, the property was sold by the Sheriff pursuant to the execution and levy aforesaid to Abe Fischer, the appellant. On October 24, 1935, some few days before the sheriff's sale as above set out, the Geraldine Oil Company, upon its vol-

untary petition, was adjudged bankrupt in the United States District Court. On motion to confirm the sheriff's sale in the District Court of Pawnee County H. E. Beese, who meanwhile had been appointed trustee in bankruptcy, appeared and objected to the confirmation of sale, as did Fischer, the purchaser thereat. Said objections were overruled and the sale was confirmed. H. E. Beese, the trustee in bankruptcy, did not at any time go into possession of the lease in question nor did he attempt to administer it as any part of the bankrupt estate. The petition in bankruptcy had listed the lease in the alternative, listing it in its schedule of real estate and personal property as being part of the assets of the bankrupt. Also therein, however, the petition alleged that the property had been assigned for benefit of creditors and that the property had been sold by the assignee for benefit of creditors to the Pauline Oil & Gas Company for the sum of \$2,000.00, and stated that the assignee for benefit of creditors was willing and ready to pay to the trustee in bankruptcy the said \$2,000.00. At no time did he exercise any jurisdiction over the property or attempt to possess himself of it in any way.

On the 4th day of June, 1936, the referee in bankruptcy without notice to Abe Fischer upon the application of the Pauline Oil & Gas Company in a summary proceeding purported to confirm the assignment made by the assignee for benefit of creditors to the Pauline Oil & Gas Company which had been made in January, 1935, or almost a year prior to the bankruptcy.

Thereafter in August, 1936, Abe Fischer commenced his suit in the District Court of Pawnee County against the Pauline Oil & Gas Company in ejectment and to quiet title to the lease involved and for damages for wrongful detention, basing his right upon the sheriff's deed which he had obtained. The Pauline Oil & Gas Company by its answer alleged that the sheriff's deed was void because of the bank-



ruptcy proceedings and alleged that it had title because of the sale to it from the assignee for benefit of creditors and the order of the referee in bankruptcy confirming said sale. Fischer by reply set up that Rainbolt had a statutory lien on the premises even prior to the assignment for benefit of creditors, that the assignment for benefit of creditors and the proceedings thereunder were fraught with fraud and that the bankruptcy proceedings and the orders entered therein did not destroy his title under the sheriff's sale. Upon trial of the issues so made up the trial court directed a verdict in favor of Fischer, holding that Sam Rainbolt had a statutory lien which prevailed over the assignment for benefit of creditors proceedings and the bankruptcy proceedings. On appeal the Supreme Court of Oklahoma held that Rainbolt did not have such a lien and that under the provision of Sec. 67f of the Bankruptcy Act the adjudication of bankruptcy voided the levy and lien of the Rainbolt execution, and that Fischer, the purchaser at said execution sale, acquired no title or interest upon which to predicate his suit or claim of fraud which would vitiate the title of the Pauline Oil & Gas Company.

So far as the questions brought to this Court are concerned, our contention in the appellate court was that Sec. 67f of the Bankruptcy Act did not operate to make void the lien of levy of Sam Rainbolt even though acquired within four months of the adjudication of bankruptcy because at and subsequent to the time the petition in bankruptcy was filed, the lease was neither in the actual nor constructive possession of the Geraldine Oil Company and was not in the actual or constructive possession of the trustee in bankruptcy; that the trustee in bankruptcy at no time had this lease in his possession nor did he attempt to obtain possession thereof but he in fact and in substance disclaimed title in and to this lease by electing to take the proceeds from the assignee for the benefit of creditors' sale to the Pauline Oil

& Gas Company; and that the order of the referee in bankruptcy purporting to confirm the sale made by the assignee for benefit of creditors to the Pauline Oil & Gas Company was without force and void to bind Fischer, who was not a party thereto because it was made in a summary proceedings without notice to Abe Fischer and the property was neither in the actual nor constructive possession of the trustee.

### **The Federal Questions Are Substantial.**

The foregoing statement shows that the Federal question which was raised and determined is substantial. The opinion of the Supreme Court of Oklahoma in effect holds that a property which is in the hands of third persons, the title to which was being attacked by reason of fraud perpetrated by a debtor (as in this case the Geraldine Oil Company) is not subject to judicial determination when the debtor thereafter goes into bankruptcy even though the trustee in bankruptcy disclaims any interest in the property. In substance the determination if permitted to stand is to the effect that a bankruptcy proceedings wipes out a lien which a creditor has or claims against a property, although said property is not in the actual or constructive possession of the trustee in bankruptcy and the trustee in bankruptcy disclaims any interest therein.

The apparent title to this property was not in the bankrupt and had not been in the bankrupt for more than four months prior to the filing of petition in bankruptcy. The possession of the property involved in this suit was not in the bankrupt and had not been in the bankrupt for more than four months prior to the filing of petition in bankruptcy. The trustee for the bankrupt in substance disclaimed any right, title or interest therein, yet the Supreme Court of Oklahoma by its holding has held that the title of

a stranger to the bankruptcy proceedings in and to the property was adjudicated in and by the bankruptcy proceedings. Such a determination has never been made by this court, and such a holding is probably not in accord with the applicable decisions of this court. The questions involved are substantial and of general importance to those affected by the enforcement of the Bankruptcy Act in this Court.

This determination is not in harmony with *Connell v. Walker*, 291 U. S. 1, 78 Law Ed. 613; *Taubel-Scott-Kitzmiller Co. v. Fox*, 264 U. S. 426, 68 Law Ed. 770; *Remington on Bankruptcy*, Sec. 1876, page 703; *Hutchins v. Cantu*, Texas Civil Appeals, 66 S. W. 138, 8 C. J. S. 904, 910, 972, 6 Am. Jur. 698; *Pigg & Son v. U. S.*, 81 F. (2d) 334; *Miller v. Equitable Credit Company*, Ga., 138 S. E. 282; *Equitable Credit Company v. Miller*, Ga., 137 S. E. 771; *McKenney v. Cheney*, Ga., 45 S. E. 433; *Frazee v. Nelson*, Mass., 61 N. E. 40; *Martin v. Greenlake State Bank*, Minn., 208 N. W. 21; *Dickens v. Breedlove*, Ga., 129 S. E. 886; *Casady & Co. v. Hartzell*, Iowa, 151 N. W. 97; *Coker v. Utter*, Ga., 108 S. E. 538; *Neugent Garment Company v. U. S. F. & G.*, Wisc., 231 N. W. 600; *Walker v. Connell*, No. Dak., 249 N. W. 726 (appealed cause *Connell v. Walker*, *supra*, 291 U. S. 1); *Kobrin v. Drazin*, N. J., 128 Atl. 796; *McCarty v. Light*, 139 N. Y. S. 853.

## VI.

### **How Federal Questions Were Raised in the First Instance in the Appellate Court and the Way in Which They Were Passed Upon by the Same Court.**

The Federal question that was urged was first raised in the answer, and cross-petition filed by Pauline Oil & Gas Company, C. M. pp. 12-18, in the trial court, and in the reply, C. M. pp. 37-41, 50, thereto filed by Fischer and was

properly raised in the appellate court. This is shown by the following quotation from the opinion of the Supreme Court:

"Then it would follow that no lien attached until execution was issued and levied on this property. That occurred in September, 1935. But the former owner and execution debtor became a bankrupt in October, 1935, and the lien by levy was nullified by the provision of the Bankruptcy Act above cited. The effect of that Act is succinctly stated in Remington on Bankruptcy, Vol. 4, p. 682, sec. 1957, as follows:

'All liens obtained by legal proceedings upon property of the bankrupt within four months preceding the filing of the bankruptcy petition and when he is insolvent, are nullified by the adjudication in bankruptcy.'

The former owner of this property was insolvent, and had been since October, 1934, when the assignment for creditors was made, and was in due course adjudged a bankrupt. Then the sheriff's sale subsequently made conveyed no title to plaintiff, and he had no title and had no right to prevail in the trial court.

This is true, even if defendant did not acquire any title to the property by purchase from the Trustee in January, 1935. It is therefore not necessary that we determine the validity of that trustee sale to pass title."

On petition for rehearing filed by Fischer the question was again raised by paragraphs numbered Second, Third and Fifth thereof (which see).

Fischer again raised the question on his application for permission to file second petition for rehearing (which see).

The general rule as stated in the opinion that levies obtained within four months of the adjudication of bankruptcy are void we do not complain of. We do complain that this rule was applied to the facts and circumstances of this case,

which facts are well reflected by the opinion as written. It is undisputed that the title and possession to this property had passed from the Geraldine Oil Company more than four months prior to the time it filed its voluntary petition and was adjudicated a bankrupt, that the trustee at no time administered any of this property, that the trustee at no time had either actual or constructive possession of this property, and although these facts which bring this case within the exceptions to the rule that levies are voided were repeatedly urged upon the Supreme Court, they were by that court disregarded by the opinion as written. It is the application of this rule of law to these undisputed facts which are reflected in the opinion which we contend constitutes a misinterpretation of Sec. 67f of the Bankruptcy Act and operates to deprive the appellant of a substantial property right.

## VII.

### **Copy of the Opinion is Attached.**

There is appended hereto a copy of the opinion of the Supreme Court of the State of Oklahoma. Such opinion is reported in — Pac. (2d) —.

Respectfully submitted,

CLAUDE H. ROSENSTEIN,  
HUNT & EAGLETON,  
HORACE BALLAINE,  
*Attorneys for Appellant.*



**EXHIBIT "A".**

Mandate. D. C. 8989.

STATE OF OKLAHOMA,  
 Supreme Court, ss:

No. 27931.

PAULINE OIL &amp; GAS Co., Plaintiff in Error,

vs.

ABE FISCHER, Defendant in Error.

The Supreme Court of Oklahoma:

To the Honorable Judge of the District Court of Pawnee County, in said State of Oklahoma.

Whereas, the Supreme Court of the State of Oklahoma, did on the 10th day of January, 1939, render an opinion in the above entitled cause, appealed from the District Court of Pawnee County,

Reversing the judgment of the trial court.

Now, Therefore, you are hereby commanded to cause such reversal to show of record in your court and to issue such process and take such other and further action as may be in accord with right and justice and said opinion.

Costs paid into this court, \$25.00.

Witness, the Honorable Wayne W. Bayless, Chief Justice of the Supreme Court of the State of Oklahoma, at the City of Oklahoma City, this 16th day of May.

ANDY PAYNE,

Clerk.

By CHRISTINE RATLIFF,

Deputy.

(SEAL.)

## IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 27931.

PAULINE OIL &amp; GAS Co., Plaintiff in Error,

vs.

ABE FISCHER, Defendant in Error.

## Syllabus

1. When an Industrial Commission award in favor of an injured workman remains unpaid, and a lien is claimed pursuant to section 13373 O. S. 1931, 85 Okl. St. Ann. sec. 49; and to enforce payment, the award is entered on the judgment docket of the District Court pursuant to section 13366, O. S. 1931, 85 Okl. St. Ann. Sec. 42, the award then "shall have the same force and be subject to the same law as judgments of the District Court," and thereby a lien, equivalent to a judgment lien, is impressed upon all of the property of the judgment debtor which would be subject to the lien of an original district court judgment, but property of the judgment debtor which would not be subject to judgment lien upon an original district court judgment, is not affected by such filing and entering of record of such award.

2. While an oil and gas lease which "grants, leases, and lets" certain land for oil and gas mining purposes, conveys to the lessee an estate in the realty described therein, such interest is not real estate within the meaning of section 690, C. O. S. 1921, which gives a judgment creditor a lien upon the "real estate" belonging to the judgment debtor.

3. A lien upon property obtained by issuance and levy of execution out of the state court, in less than four months preceding the filing in federal court of a bankruptcy petition by the judgment debtor who is insolvent, is nullified by the adjudication of bankruptcy, and a subsequent sheriff's sale on such execution passes no title to the purchaser.

4. A plaintiff seeking to quiet title and recover an oil and gas leasehold estate in lands, and certain materials, machinery, tools and appliances thereon, must recover, if at all, on the strength of his own title; and if his title is

based on purchase at sheriff's sale on execution nullified by the intervening bankruptcy of the judgment debtor, then such plaintiff has no title and cannot recover.

Appeal from the District Court of Pawnee County. Hon. Thurman S. Hurst, Judge.

Action by Abe Fischer against Pauline Oil Company, a corporation, Judgment for Plaintiff, and defendant appeals.

Reversed.

T. G. Chambers and James R. Eagleton, For Plaintiff in Error.

Hunt & Eagleton, Horace D. Ballaine, For Defendant in Error.

WELCH, V. C., J.

Abe Fischer, defendant in error, hereinafter referred to as plaintiff, commenced this action in the District Court of Pawnee County against the Pauline Oil & Gas Company, a corporation, plaintiff in error, hereinafter referred to as defendant; to quiet title to an oil and gas lease, to recover materials, machinery, tools and appliances thereon, and possession of the premises covered by the lease, and for damages. Judgment was for the plaintiff and defendant brings appeal.

The plaintiff's claim of title is based upon a conveyance from the sheriff following a sale under execution growing out of an award of the Industrial Commission against the Geraldine Oil Company. The defendant's claim of title is based upon a conveyance from a trustee for the benefit of creditors, following an assignment to said trustee by the Geraldine Oil Company.

On August 30, 1934, the Industrial Commission granted an award to Sam Rainbolt against J. W. Snyder, employer, and the Geraldine Oil Company, the owner of the property involved, which company was secondarily liable for the award. On October 11, 1934, the Geraldine Oil Company made an assignment of the property to a trustee for the benefit of creditors.

On December 8, 1934, the award of the Industrial Commission in favor of Sam Rainbolt was filed of record in the district Court of Pawnee County.

On January 21, 1935, sale was made by the aforesaid trustee of the property involved herein to the defendant.

On September 13, 1935, execution was issued on the judgment in favor of Sam Rainbolt by virtue of the award obtained in the Industrial Commission, said execution out of the district court being directed to the properties of the Geraldine Oil Company; and on September 17, 1935, levy was made under said execution on the property involved herein.

On October 24, 1935, upon its voluntary petition, the Geraldine Oil Company was adjudged bankrupt in the United States District Court.

On November 12, 1935, sheriff's sale was made of the property involved, pursuant to the execution and levy aforementioned; and following confirmation of said sale on June 10, 1936, sheriff's deed was issued to the purchaser, the plaintiff herein. On June 4, 1936, the United States District Court approved and confirmed the sale of said property made by the trustee for the benefit of creditors to the defendant on January 21, 1935.

Upon the pleadings, and after the introduction of all the evidence, the trial court directed a verdict for the plaintiff and assigned as his reason therefor that the judgment of the Industrial Commission constituted a lien upon all the property of the Geraldine Oil Company and that said lien was not destroyed by either the assignment for the benefit of creditors nor by the subsequent bankruptcy proceedings.

Since the right of plaintiff to recover depends on the strength of his own title, and since his title is assailed, we should first test the validity thereof.

It is plaintiff's theory that by purchase at the sheriff's sale he obtained title superior to the title of the former purchaser at the trustee's sale, and that although the levy on the property, as on execution, was in less than four months of bankruptcy, and the sheriff's sale was some weeks after bankruptcy, that his title was unaffected thereby. This theory is founded upon plaintiff's contention that lien in favor of the judgment creditor existed prior to the assignment for the benefit of creditors, and that such lien continued in full force until the sheriff's sale and confirmation

of sale, and that such lien was unaffected by anything that intervened. If that theory is sound the plaintiff rightfully recovered.

Upon the other hand, it is contended against plaintiff's title that no lien in favor of the judgment creditor had attached in October 1934, when the property assignment for the benefit of creditors was made, nor even in January 1935, when the trustee for creditors sold the property to the defendant. It is also asserted against plaintiff's title that since the sheriff's execution levy on the property was made in less than four months of bankruptcy, that the same was void by virtue of section 67, subdivision F of the bankruptcy act of 1898, as amended June 27, 1934, which in material part provides as follows:

"That all levies . . . or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, . . . shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy . . . shall be deemed wholly discharged and released from the same. . . ."

And if either of those contentions or theories is correct the plaintiff cannot prevail.

The Federal court in approving the sale theretofore made to the defendant by the trustee for creditors, seems to have proceeded upon the theory that the filing of the judgment for record in the District Court of Pawnee County did not create a lien on the property involved, and that no such lien existed since the judgment creditor had not up to the time of such sale, followed the recording of the judgment with the issuing of any execution.

It is to be noted that although the judgment creditor filed his judgment for record in the district court of Pawnee County in December 1934, he did not follow with execution until nine months later, in September, while bankruptcy intervened the following October. And in the meantime, in January, the trustee for creditors had sold the property pur-



suant to assignment theretofore made the preceding October.

The authority of such a judgment creditor to proceed by recording judgment and issuing execution is found in section 13366, O. S. 1931, 85 Okl. St. Ann. Sec. 42, which reads in part as follows:

"If payment of compensation or an installment thereof due under the terms of an award, except in case of appeals from an award, be not made within ten days after the same is due by the employer or insurance carrier liable therefor, the Commission may order a certified copy of the award to be filed in the office of the Court Clerk of any county, which award whether accumulative or lump sum shall be entered on the judgment docket of the district court, and shall have the same force and be subject to the same law as judgments of the District Court. Upon the filing of such certified copy of the Commission's award a writ of execution shall issue and such process shall be executed and the cost thereof taxed, as in the case of writs of execution, on judgments of courts of record, as provided by the code of civil procedure. • • •"

It seems clear from the language of the Act that the force and effect of such a judgment so filed and recorded is the same, as respects the questions here involved, as the rendering and recording of a district court judgment.

In *First National Bank of Healdton v. Dunlap*, 122 Okla. 288, 254 Pac. 729, this court held that the rendering and recording of a district court judgment did not create a lien upon an oil and gas lease, and the sale of same by the judgment debtor before issuance and levy of execution, passed title clear of any lien.

To be consistent with that authority we must hold that the judgment creditor here obtained no lien on this property merely by the filing of his judgment for record in the office of the court clerk.

Then it would follow that no lien attached until execution was issued and levied on this property. That occurred in September, 1935. But the former owner and execution

debtor became a bankrupt in October 1935, and the lien by levy was nullified by the provision of the Bankruptcy Act above cited. The effect of that Act is succinctly stated in Remington on Bankruptcy, Vol. 4, p. 682, sec. 1857, as follows:

"All liens obtained by legal proceedings upon property of the bankrupt within four months preceding the filing of the bankruptcy petition and when he is insolvent, are nullified by the adjudication in bankruptcy."

The former owner of this property was insolvent, and had been since October 1934, when the assignment for creditors was made, and was in due course adjudged a bankrupt. Then the sheriff's sale subsequently made conveyed no title to plaintiff, and he had no title and had no right to prevail in the trial court.

This is true, even if defendant did not acquire any title to the property by purchase from the Trustee in January 1935. It is therefore not necessary that we determine the validity of that trustee sale to pass title.

The plaintiff also relies upon section 13373, O. S. 1931, 85 Okl. St. Ann. Sec. 49, which is as follows:

"The right of compensation granted by this act, and any claim for unpaid compensation insurance premium shall have the same preference or lien, without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor."

Plaintiff asserts that thereby the lien of the judgment creditor attached from the time Rainbolt commenced proceedings to collect his award by filing his judgment for record in the district court.

It is to be noted here that Snyder, and not the Geraldine Oil Company, was the "employer" of Rainbolt. That company was only secondarily liable to Rainbolt and such secondary liability could be enforced only after exhausting execution on the primary liability. (Sec. 13351, O. S. 1931, 85 Okl. St. Ann. Sec. 11). Assuming, but not deciding, that

the Geraldine Oil Company would be included in the designation "employer" in section 13373, *supra*, still this contention of plaintiff cannot be sustained.

Section 13373, *supra*, purports to grant a lien the same as a lien "for wages for labor." That latter lien is provided for in Section 11007, O. S. 1931, 42 Okl. St. Ann. Sec. 92, and is enforceable in the specific manner provided by the next following sections. Enforcement of such lien by laborers in the manner specified is essential to preserve the right to such lien, *McGuire v. Duncan*, 100 Okla. 217, 229 Pac. 199, and that rule likewise applies to claimants for unpaid compensation insurance premiums, who assert a lien under Section 13373, *supra*, *Pacific Petroleum Co. v. Sunbeam Oil Co.*, 176 Okla. 293, 54 Pac. (2d) 1054. It would therefore seem that Section 11007, *supra*, and Section 13373, *supra*, are not self executing but must be read in connection with the methods provided for enforcement of the liens therein mentioned.

The judgment creditor here proceeded to enforce his lien or his right to collect from the Geraldine Oil Company by filing his award or judgment in the District Court pursuant to Section 13366, *supra*. While the plaintiff contends the lien mentioned in Section 13373, *supra*, attached to all property from such filing of the judgment, we are convinced that the effect of such filing of the judgment is tested by the provisions of the Section (13366, *supra*) which authorizes such procedure. There it is provided that such a judgment or award so filed and entered upon the district court records "shall have the same force and be subject to the same law as judgments of the district court." This contention of plaintiff would accept all of the benefits of filing an award in the district court to obtain for it the status of a district court judgment, but would avoid the fixed limitations of such a status.

When this award was filed and entered on the judgment docket of the district court and thereby gained the status of a district court judgment, and had "the same force" and was "subject to the same law as judgments of the district court"; it thereby impressed a lien on all property upon which a district court judgment would impress a lien, and as to property upon which a district court judgment would

not impress a lien, such filing of this award likewise would not impress a lien. We think no other logical result can be reached from the language of the statutes. Therefore this contention of the plaintiff cannot be sustained.

There is some language in plaintiff's brief indicating a contention, in substance, that a lien in favor of Rainbolt for compensation mentioned in Section 13373, *supra*, attached to all of the property of the Geraldine Oil Company from the time Rainbolt commenced proceedings to enforce his right of compensation under the Workmen's Compensation Act. That contention could not be sound for the reasons heretofore stated, and because no such provision or legislative intent can be found from the statutes. If that position could be sound, then any purchaser of an item of real or personal property, however insignificant, would be under the burden of ascertaining whether his vendor was the employer of labor, or might be liable primarily or secondarily on any workmen's compensation claim in any manner pending before the Industrial Commission.

We conclude that the claimant, Rainbolt, obtained no lien on the property here involved by the commencement of his proceedings before the Industrial Commission to enforce his right of compensation; nor by the filing and entering of the award in the records of the district court; and that whatever lien he obtained by levy of execution was obtained within four months of bankruptcy of the judgment debtor, and was therefore nullified by the bankruptcy act, and that the subsequent sheriff's sale on that execution conveyed no title to the plaintiff.

It follows that the plaintiff had no title and no right to recover, and the trial court erred in rendering judgment for the plaintiff.

That judgment is reversed, and the cause remanded, with directions to enter judgment denying the plaintiff any relief.

Bayless, C. J. Riley, Osborn, Corn, Gibson, Davison and Danner, JJ. Concur. Hurst, J. Not Participating.

I, Andy Payne, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the above and foregoing is a full, true and complete copy of the opinion of said Court

in the above entitled cause, as the same remains on file in my office.

In Witness Whereof, I hereunto set my hand and affix the said Court, at Oklahoma City, this the 16th day of May, 1939.

ANDY PAYNE,

[SEAL.]

Clerk.

By CHRISTINE RATLIFF.

Filed in Supreme Court of Oklahoma, Jan. 10, 1939.  
Andy Payne, Clerk.

Filed in the District Court, Pawnee County, Oklahoma,  
May 17, 1939. Nora B. Harshbarger, Court Clerk. By  
Ethel Traver, Deputy.

(2862)



